

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY )  
AVERAGE WHOLESALE PRICE ) MDL NO. 1456  
LITIGATION ) Civil Action No. 01-12257-PBS

THIS DOCUMENT RELATES TO ) Hon. Patti B. Saris  
01-CV-12257-PBS AND 01-CV-339 )

**TRACK 1 DEFENDANTS' MOTION FOR  
LEAVE TO FILE UNDER SEAL**

The Track 1 Defendants,<sup>1</sup> by their attorneys, hereby move this Court for leave to file the following submissions under seal: (a) Track 1 Defendants' Memorandum in Opposition to Class Certification, with Appendices; (b) Declaration of Steven J. Young in Opposition to the Plaintiffs' Motion for Class Certification and exhibits thereto; (c) Declaration of Eric M. Gaier, Ph.D. in Support of the Track 1 Defendants' Opposition to Class Certification and exhibits thereto; (d) Declaration of Robert P. Navarro in Support of Track 1 Defendants' Opposition to Class Certification and exhibits thereto; (e) Declaration of William F. Cavanaugh, Jr. in Support of Track 1 Defendants' Memorandum in Opposition to Class Certification and exhibits thereto; (f) the Johnson and Johnson Group's Separate Memorandum in Opposition to Plaintiffs' Motion for Class Certification and exhibits thereto; (g) AstraZeneca Pharmaceutical LP's Individual

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<sup>1</sup> The Track I defendants are: AstraZeneca, the BMS Group, SmithKlineBeecham, d/b/a GlaxoSmithKline, the Johnson & Johnson Group, and the Shering-Plough Group.

Memorandum in Opposition to Plaintiffs' Motion for Class Certification, and exhibits thereto; and (h) Track 1 Defendants' Motion to Strike the Declaration of Raymond S. Hartman, with supporting memorandum and the Declaration of Halbert L. White and exhibits thereto.

Pursuant to the Protective Order entered by this Court on December 13, 2003 (the "Protective Order") both the parties in the above captioned case and non-party witnesses have designated many documents and other information produced in this litigation as either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL." The submissions listed above incorporate – either directly or indirectly – information that has been designated "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL." Not only do the Track 1 Defendants' submissions quote extensively from and/or attach confidential documents, they also include references to contractual terms and pricing data that defendants and non-party witnesses deem highly proprietary in nature. Pursuant to paragraph 15 of the Protective Order, any document or pleading containing quotes from or otherwise referencing such information shall be filed under seal.

On September 3, 2004, citing similar reasons, plaintiffs sought leave to submit papers in support of their motion for class certification under seal.

WHEREFORE, the Tack 1 Defendants respectfully request that this Court grant them leave to file the submissions listed above under seal.

Respectfully submitted,

THE TRACK 1 DEFENDANTS

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Dated: October 25, 2004

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing was delivered to all counsel of record by electronic service pursuant to Paragraph 11 of Case Management Order No. 2, by sending on October 25, 2004, a copy to Verilaw Technologies for posting and notification to all parties.

Lucy Fowler  
Lucy Fowler

**CERTIFICATION PURSUANT TO LOCAL RULE 7.1**

Pursuant to Local Rule 7.1(A)(2), the undersigned certifies that counsel the Track I Defendants conferred with counsel for plaintiffs on this motion. Plaintiffs reserved the right to challenge, upon review of the documents that are being filed under seal pursuant to this motion, the confidentiality of any such documents in accordance with the Protective Order.

Lucy Fowler  
Lucy Fowler